



STEVEN L. BESHEAR  
Governor

FINANCE AND ADMINISTRATION CABINET  
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LORI HUDSON FLANERY  
Secretary

THOMAS B. MILLER  
Commissioner

In the matter of:

[REDACTED], INC

Contact: [REDACTED], Inc  
[REDACTED], CPA

FINAL RULING NO. 2015-01  
January 05, 2015

Tangible Personal Property Tax Assessments  
January 1, 2008 through January 1, 2011

### FINAL RULING

The Kentucky Department of Revenue ("Department") currently has outstanding tangible personal property ad valorem tax assessments against [REDACTED], Inc ("[REDACTED]"), for the January 1, 2008 through January 1, 2011 tax years. These assessments total \$[REDACTED] (plus applicable interest and penalties). A breakdown of the assessments is shown in the chart below:

Tax Year	County	Tax Due	Interest As of 01/05/2015	Penalty 01/05/2015	Total Due As of 01/05/2015
January 1, 2008	[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2008		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2009		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2009		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2009		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2010		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2010		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
January 1, 2010		\$[REDACTED]	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

January 1, 2011	██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
January 1, 2011	██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
January 1, 2011	██████████	\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████
<b>TOTALS</b>		\$ ██████████	\$ ██████████	\$ ██████████	\$ ██████████

██████████ protested the assessments issued. Per ██████████' protest letter "██████████ has some additional information that will show assets that we initially included on the reports that we should not have included. More specifically, the protest is in reference to the Recycling Machinery and Equipment line on each tax notice."

Upon further requests by the Department, it appears there are four specific issues with respect to the assessments. First, ██████████ believes that inventory should not have been reclassified to merchants' inventory from raw materials, but has not provided documentation or other information to support their position. ██████████ is a recycling company, and as such is not entitled to have inventory treated as raw materials as a recycler is not a manufacturer.

Second, ██████████ asserts that the vehicle in question was located in ██████████ but erroneously listed as being in Kentucky. However, ██████████ has failed to provide any documentation showing that the vehicle is located in ██████████, or that the vehicle has been removed from the Kentucky asset listing.

Third, ██████████ claims that the rail spur should be removed from the return, as it is real property, and not tangible personal property. The Department requested that ██████████ provide documentation that it pays real property tax on the rail spur. ██████████ failed to provide such documentation.

Finally, ██████████ disagrees with the class life of certain fixed assets. When asked to provide additional detail, ██████████ has failed to provide such detail or documentation showing that a different class life should be utilized.

The assessments in question are presumed to be valid and it is the taxpayer's burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Hougland & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). The Department has requested on several different occasions for ██████████ to submit additional supporting documentation. ██████████ has not provided any additional documentation to sufficiently prove its position. ██████████ therefore failed to meet its burden of proof that the assessments in question are incorrect.

A penalty of ten percent (10%) was originally assessed in accordance with KRS 132.290(3). The Department has the authority to abate assessed penalties where it is shown to its satisfaction that failure to file or pay timely is due to reasonable cause per KRS 131.175. ██████████ has failed to provide any proof that the failure to file or pay timely is due to reasonable cause as outlined in 103 KAR 1:040.

Therefore, the outstanding tangible personal property tax assessments totaling \$██████████ (plus applicable interest and penalties) are legitimate liabilities of ██████████ and are due to the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

### **APPEAL**

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;

3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,  
FINANCE AND ADMINISTRATION CABINET

  
Attorney Manager  
Office of Legal Services for Revenue

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED